

DOCUMENT RESUME

02346 - [A1332302]

[Late Receipt of Bid by Contracting Office]. B-187985. May 6, 1977. 4 pp.

Decision re: Z B Precision Products, Inc.; by Paul G. Dembling, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -

Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Aviation Supply Office, Philadelphia, PA.

Authority: A.S.P.R. 7-2002.2. 46 Comp. Gen. 42. 46 Comp. Gen.

45. 42 Comp. Gen. 255-256. 49 Comp. Gen. 191. 49 Comp. Gen.

195. 55 Comp. Gen. 220. E-168107 (1969). B-181021 (1974).

A bidder protested the refusal to consider its bid which was received in the bid opening room after the time specified for receipt of bids. A certificate of mailing does not satisfy the late bid clause requirement for registered or certified mail. A late bid sent by regular mail may not be considered since the only documentary evidence available indicates that it was received at the agency after bid opening. (Author/SC)

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20543

Proy. 1/1/77
Proc. 1/1/77

FILE: B-187985

DATE: May 6, 1977

MATTER OF: Z B Precision Products, Inc.

DIGEST:

1. Bidder who selects other than registered or certified mail when using postal service to mail bid assumes risk of late delivery. Certificate of mailing does not satisfy late bid clause requirement for registered or certified mail.
2. Late bid sent by regular mail may not be considered since only documentary evidence available indicates that it was received at agency after bid opening.

Z B Precision Products, Inc. (Z B) protests the Department of the Navy's Aviation Supply Office's (ASO) refusal to consider its bid which was received in the bid opening room after the time specified for receipt of bids. Z B maintains that the "Certificate of Mailing" in its possession proves that the bid had been timely mailed and that late receipt was due to mishandling at the installation.

Invitation for bids (IFB) N00383-77-B-0097 was issued on October 29, 1976, with a scheduled bid opening time of 2:00 p.m. on November 29, 1976. A Z B envelope which appeared to contain that firm's bid was received in the bid opening room at 11:15 a.m. on November 30, 1976. The contracting officer determined that the bid could not be considered because it did not meet any of the conditions for consideration of late bids delineated in Armed Services Procurement Regulation (ASPR) § 7-2002.2 (1976 ed.) which was incorporated by reference in Clause C-302 of the IFB. The Late Bid clause provides:

"LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1974 SEP)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

- (1) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the

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receipt of bids (e. g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

- (ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

* * * * *

(c) The only acceptable evidence to establish * * *

- (ii) the time at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation. "

Z B argues that its bid should be considered under paragraph (a) (i) of the above clause since the Certificate of Mailing and the postmark on its bid envelope clearly show the date of mailing to be the fifth calendar day prior to the date specified for the receipt of bids.

Z B, however, did not mail its bid either by certified or by registered mail, required as a prerequisite to its consideration under paragraph (a) (i) in the event of late receipt. In this connection, we stated in 46 Comp. Gen. 42, 45 (1966):

"As a general rule, this Office has held that the ASPR language concerning late bids and proposals is mandatory and that any deviation from the requirements, particularly the failure to use registered or certified mail in the case of a bid or proposal delayed in the mail and received after the time set in the solicitation, renders the bid or proposal late and therefore not for consideration.

Our basis for this position was delineated as follows in 42 Comp. Gen. 255, 256 (1962):

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"While it may be that the mail service you elected to use could have been authorized as adequate to satisfy the intent and purpose of the subject provision of the invitation, the fact remains that it was not listed therein nor in the controlling regulation. It is also clear from the Postal Manual that the 'certificate of mailing' method of posting an article in the mail differs materially from 'certified mail' in that in the latter case the article mailed is stamped by the receiving postal employee with an identifying number corresponding to the numbered receipt issued for it, whereas a certificate of mailing is issued without any corresponding official identification on the article covered by it."

Consequently, we have consistently held that it is the bidder's responsibility to see that his bid is mailed in time to reach the designated office by opening time; and a bidder who elects other than registered or certified mail when using the postal service for delivery of his bid assumes the risk of late delivery. 49 Comp. Gen. 191, 195 (1969); B-168107, December 18, 1969. Therefore, we must conclude that Z B's bid is not for consideration under the exception stated in paragraph (a) (i) of the Late Bid clause.

The remaining question presented by Z B is whether the late receipt of its bid in the bid opening room can be said to be due solely to Government mishandling. Paragraph (a)(ii) of the Late Bid clause provides that a late bid may be considered if it is determined that the late receipt in the bid opening room was due solely to Government mishandling after receipt at the installation.

Before we can consider the question of mishandling, the time of receipt at the installation must be established. B. E. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145. Such receipt must have occurred prior to bid opening. Astro Development Laboratories, Inc., B-181021, July 17, 1974, 74-2 CPD 36. The clause provides in paragraph (c)(ii) that the only acceptable evidence of receipt at the Government installation is the time/date stamp on the wrapper or other documentary evidence of receipt maintained at the installation. No time/date stamp appears on the Z B bid package. The only documentary evidence of receipt at ASO is the handwritten notation on the Z B package:

"rec'd in bid rm 11/30/76 11:15 AM tk."

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Z B argues that ASO was negligent in failing to time/date stamp its bid package which the protester believes was at ASO prior to bid opening. Z B maintains that its bid arrived at ASO on November 26, or November 27, 1976, in the A. M. delivery at the latest, and that the delay in getting the bid to the bid opening room could only have been due to mishandling.

The contracting officer acknowledges that the bid envelope should have been time/date stamped. He explains that sometimes, on a busy day, the mailroom employees fail to stamp incoming bid envelopes. He does not accept Z B's assumption, however, that its bid must have timely arrived at the installation. The contracting officer believes that Z B's bid must have been received "no earlier than Monday 29 November," and while it is possible that it arrived in the morning mail that day (in which case it should have been received in the bid room by the 2:00 p.m. bid opening) it is also possible that the bid arrived later than the same day or the next day.

We need not speculate on when Z B's bid arrived at the installation. Paragraph (c)(ii) of the late bid clause makes it clear that the time of receipt must be established by documentary evidence such as a time/date. While documentary evidence in this case shows that the bid was received in the bid room on November 30, the day after bid opening, there is no documentary evidence to establish when the bid was first received at the installation. The protester points out that the lack of a time/date stamp on its envelope is not its fault; and it questions why it should be penalized for someone else's mistake. We recognize that the protester cannot be blamed for the failure of its bid envelope to contain a time/date stamp. At the same time, we point out that this problem could have been avoided if the protester had mailed its bid by either certified or registered mail in the first place. Under the circumstances and in the absence of any documentary evidence to show when the Z B bid arrived at the installation, the bid may not be considered for award.

The protest is denied.


Acting Comptroller General
of the United States